THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:07-03--2006

WRIT PETITION No.4001 OF 2006

BETWEEN:

B.Mallesham.

…Petitioner

And

The Government of Andhra Pradesh rep.by its Secretary,
Panchayatraj Department, Secretariat, Hyderabad and others.

…Respondents

ORDER:

The petitioner seeks to issue a writ of mandamus, declaring the action of the second respondent in not issuing appropriate proceedings for continuation of the petitioner as Sarpanch of the Gram Panchayat Faridpet on the ground that the revision filed by the petitioner against the order of suspension is pending on the file of the first respondent even after expiry of the period mentioned in the order of suspension, as arbitrary, illegal and contrary to the provisions of the A.P., Panchayat Raj Act.

It is stated that the petitioner was elected as Sarpanch of Faridpet

village, Machareddy Mandal, Niziamabad District. The said post of Sarpanch of Faridpet village was reserved for Scheduled Caste candidates and the petitioner being the S.C., candidate, elected as Sarpanch in the elections held in the month of August, 2001. It is stated that the District Collector (Panchayat Wing) issued a notice dated 1-9-2005 to the petitioner as to why he shall not be placed under suspension if no suitable explanation is filed within 15 days for the following charges:

1. Rs.20,080/- withdrawn from C.C.Bank account and works not executed.

2. Rs.91,205/- withdrawn from the 11th Finance Funds Commission and execute works Rs.26,250/- and balance Rs.65,000/- is with him.

3. Rs.34,000/- withdrawn from Gram Panchayat funds and submitted vouchers in respect of the amount of Rs.15,342/- with regard to balance amount Rs.18,608/- there are no vouchers.

Thereafter, the second respondent passed the impugned orders in proceedings No.674/2005-85/Pan, dated 22-10-2005, suspending the petitioner for a period of 3 months as the petitioner failed to avail the opportunity pursuant to the show cause notice.

It is the case of the petitioner that the said suspension order passed for a period of 3 months was served on 27-10-2005 and three months period is expired by 26-1-2006. It is stated that the said order has been passed under Section 249(6) of the A.P. Panchayat Raj Act (for short “the Act”) by the District Collector and the power to suspend the Sarpanch by the District Collector is only for a maximum period of 3 months and the said three months period has been expired. The order has already been worked out, therefore, the petitioner cannot be treated under suspension from 27-1-2006 onwards.

Heard the learned counsel appearing for the petitioner as well as the

learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents.

The learned Government Pleader submits that against the suspension order, the petitioner filed a revision before the Government and the Government heard the revision on 2-1-2006 and the second respondent has already filed a report before the Government and as per the said report, there are outstanding balances under the following heads with the Sarpanch:

1. Under Gram Panchayat funds from out of Rs.20,080-00 drawn from CC Bank, he has produced vouchers for Rs.18,700-00 which are not certified by the technical people and there is a balance of Rs.1380-00 which was not remitted.

2. Similarly he has drawn Rs.18,608-00 from Gram Panchayat funds he has produced vouchers for Rs.18,440-00 without certificate of expenditure by technical persons. There is a balance of Rs.168-00.

3. EFC funds for Rs.65,000-00 he has produced M.B.for Rs.40,965-00 and for balance of Rs.24,035-00 there are no M.Bs.

It is further stated that no doubt, the suspension period of three months is expired on 27-1-2006, during the course of the pendency of the said revision, a notice dated 29-11-2005 under Section 249(1) of the Act for removal of the petitioner from the office of the Sarpanch was issued and the said notice was received by the petitioner on 15-12-2005 and as the revision against the suspension is pending, no orders either for extension or removal of the petitioner have been passed.

Admittedly, as on today, the Government has not passed any orders under second proviso to Sub Section (6) of Section 249 of the Act extending the suspension of the petitioner. Therefore, as on today, no suspension is existed against the petitioner. The

proceedings contemplated under Section 249(6) of the Act for placing the Sarpanch under suspension would different and distinct from that of the powers of the Government to remove the Sarpanch under Section 249(1) of the Act and the proceedings under Section 249(6) of the Act are different and distinct to place the Sarpanch under suspension. Admittedly as on today, no orders of suspension are in existence.

Having regard to the facts and circumstances of the case, the writ petition is allowed, directing the second respondent to issue necessary proceedings for continuation of the petitioner forthwith as Sarpanch of the Gram Panchayat, Faridpet in view of the expiry of three months suspension period pursuant to the impugned order dated 22-11-2005. However, the said orders to be passed by the District Collector, continuing the petitioner as Sarpanch will be subject to the orders that my be passed either by the Government extending the suspension period as per the proviso to sub Section (6) of Section 249 of t1he Act or the final orders that may be passed by the Government under Section 249 (1) of the Act. If any orders are passed extending the period of suspension by the Government, the orders passed by the District Collector continuing the petitioner shall automatically stand vacated. No costs.

_____ **V.ESWARAIAH, J**

Date: 07-03-2006.

Note:-

Issue CC in 3 days.

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Shr.